

Approved as Submitted: August 20, 2003

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – JULY 16, 2003**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the special meeting to order at 5:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairperson Kennedy  
Late: Mayor Pro Tempore/Vice-chair Chang (arrived at 5:13 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 5

**2.**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 5:03 p.m.

## **RECONVENE**

Mayor/Chairperson Kennedy reconvened the meeting at 7:00 p.m.

## **CLOSED SESSION ANNOUNCEMENT**

City Manager Tewes announced that no reportable action was taken in closed session and that the closed session items were continued to the conclusion of the meeting.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairperson Kennedy, John Dossetti led the Pledge of Allegiance.

## **CITY COUNCIL REPORT**

Council Member Tate stated that the Economic Development Subcommittee met last week and that one of the items reviewed was the Request for Proposal (RFP) that would be going out, soliciting interest in the downtown for \$3 million (\$1 million for economic development; \$1 million for housing; and \$1 million to be used for infrastructure). The Subcommittee would like to report that it is important for anyone interested in developing in the downtown that they get involved in the RFP process and express an interest. The City is trying to determine the kinds of projects individuals are interested in pursuing in the downtown. It is the Subcommittee's hope to factor all projects into the decision making process in the allocation of RDA funds. He indicated that this is a one time opportunity and that the Council/Redevelopment Agency anticipates that it will be doing this once a year or a couple of years out. He said that the Council/Redevelopment Agency wants to understand the full scope of interest at this time.

Council Member Carr indicated that the City will not be looking for a lot a detail. He requested that anyone who has an interest in developing in the downtown contact City staff. He stated that the Subcommittee would like the RFP process to be as comprehensive as possible because this would be an opportunity to take a look at implementation of the updated Downtown Plan.

Council Member Sellers addressed the Indoor Recreation Center Subcommittee, indicating that the Subcommittee conducted two meetings, including the one held last Monday. He said that significant progress has been made in moving forward in developing a preliminary design. It is anticipated that the Subcommittee will hold at least one more meeting and make a presentation to the Council in August. He said that between now and August 20, a Parks and Recreation subcommittee meeting will be held and that he and/or Mayor Pro Tempore Chang will be attending this meeting, identifying where the Subcommittee is at this point in time. He indicated that three members and an alternate Parks and Recreation Commissioner serve on the Subcommittee. The Subcommittee is cognizant that the Parks and Recreation Commission is concerned about their role and that the Subcommittee is interested in talking to them in detail about what this role out to be both individually and at the Parks and Recreation

Commission level. He felt that the Commissioners are a valuable part of this process and that they will be included throughout the process.

Mayor Kennedy indicated that he and Mayor Pro Tempore Chang serve on the Urban Limit Line (Greenbelt) Committee. This committee is composed of members throughout the community, including those who reside in the greenbelt area, a Greenbelt Alliance representative, Open Space advocates, developers and others in the community who have an interest in the Urban Limit Line/Greenbelt. The Committee met on Monday evening for the fifth time and that it was a fruitful meeting. A good discussion was undertaken about the concept of urban limit line and greenbelt; what the terms mean and how they would be applied. The urban limit line could be called the ultimate growth line or the 50-year growth line. There was discussion whether the greenbelt should be inside or outside the urban limit line. There was also discussion about issues relating to compensation to landowners and how to protect greenbelts (e.g., purchase of conservation easement, zoning, and/or acquisition of property). Other areas of discussion were special study areas that include the area southeast of Tennant/Highway 101 near Murphy and Fisher; the former Bevelacqua property bounded by Spring, Edmundson, DeWitt and the housing development near Community Park; and the Sobrato open space area. He indicated that the Committee will be meeting on August 11 at 7 p.m. in the Villas Conference Room, noting that the meetings are open to the public. He stated that the voters, in the late 1980s, voted in favor of an advisory measure to establish a greenbelt around the City of Morgan Hill. The 2002 General Plan further discussed the evaluation of a greenbelt around the City. The Committee's efforts will be to focus on achieving these objectives. He indicated that he also serves on the Santa Clara County Cities Association and the Santa Clara Valley Transportation Authority (VTA) Financial Advisory Ad Hoc Committee that is addressing the serious budget shortfall the VTA is facing.

### **CITY MANAGER REPORT**

City Manager Tewes indicated that the State has not yet adopted its budget and that staff does not know the potential impact on the City's budget. He said that the City receives monthly allocations of Motor Vehicle License Fee revenues from the State, noting that this month the state controller short paid the City \$36,000 because of the State's failure to adopt a budget and its action on the Motor Vehicle License fees. Next month, it is anticipated that the City will be short paid approximately \$100,000 if the budget is not adopted. He informed the Council that the agenda packet also includes a preliminary report for the Fiscal Year ending June 30, 2003 which suggests that the City ended the year as predicted when staff brought its budget proposals to the Council.

### **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **OTHER REPORTS**

The City Treasurer's Quarterly Finance and Audit Report was deferred to a future meeting date.

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**PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Robert Bennich noted that the City hired former Chief of Police Schwab to act as a facilitator for a public art workshop. He quoted from a discussion guide that was distributed and used as a basis for that meeting. He noted that the City recently completed the new Community and Cultural Center and that it does not contain any forms of public art by known artists. He said that the City is moving forward with a large project, a world class aquatics center. He has not seen a requirement that a portion of the funds be devoted to public art. The City is looking at relocating the police facility with no requirement for public art to be a part of that structure. The same applies to the new library, new indoor recreation center, or the future expansion of City Hall. He stated that the editorial page of the San Jose Mercury News discusses how eliminating funding for art is not an option. He said that the City was supposed to have a draft ordinance ready for public discussion and City Council review over a year ago. It was the goal of the January 2002 workshop to raise various issues involved in developing an ordinance so that it can be considered before a preliminary draft is created. He inquired what is happening to the draft ordinance to address public art in the City.

City Manager Tewes indicated that several months ago the Council established a series of workshops on a number of issues that arose out of a Council goal setting retreat. He said that the workshop for the 1% policy for public art workshop is scheduled for August 27 at 5:00 p.m. Therefore, the Council is following through with the direction that has been provided.

John Dossetti addressed the Monterey Road underpass that remains a mess after several years, noting that this is the entrance into Morgan Hill. He understood that there are economic constraints. However, the State of California installed a sprinkler system and improved the underpass when it gave the Highway to Morgan Hill. He noted that the City has allowed the improvements to die and that it is not maintaining the improvements.

City Manager Tewes indicated that last week, the Council approved a project and authorized the award of a bid to clean up the underpass. He stated that the construction work will commence in August.

Mark Grzan expressed concern about the dissemination of information to the public regarding the perchlorate issue. He felt that the information being given to the public is not clear and may be misleading. He said that non-detect does not mean that there is no perchlorate in the City's water system but that perchlorate is measured to 4 parts per billion (ppb). He felt that the information provided on the City's website indicates that there is non-detect perchlorate level in the City's water and that the public may be thinking that the water is perchlorate free. There is an issue where some of the averaging being conducted is incorrect. He felt that this incorrect average falsely underscores the amount of contamination in the water. The City Vision newsletter states that the City is meeting state and federal safety standards. He did not believe that there were any federal safety standards but that there are monitoring standards. He said that there is an advisory from the EPA indicating that 1 parts per million is the recommended human dose, noting that the City is far from this mark. He felt that it

needs to be made clear to the public that the City's water supply and the public's health are at risk and that it gives each family the opportunity to make choices. He felt that the right thing to do is to let citizens know what it is drinking and that the City closes any wells that are contaminated, finding other water services so that the public's health is not placed at risk.

City Manager Tewes said that the City recognizes its responsibility to provide accurate and responsible information to the public and that it has been the City's goal to do so. Staff will strive to make information clearer in future communications to the extent possible. He stated that it is important for the community to understand that the City's water supply is regulated by the California Department of Health Services. The testing regiments that the City is required to follow are guided/directed by state regulations. When the City states that the water supply meets the state and federal regulations, the City is assuring the community that it has met all of the testing protocols and that the results of the test reflect the levels established by the regulatory agencies. He stated that the current State regulation for perchlorate is a regulatory "action level." He indicated that the State Department of Health Services has been directed by the legislature and the Governor to adopt a different regulatory level called a "maximum contaminant level" by January 2004. Until this occurs, there is an "action level" that is established at 4 ppb which represents the level of detectability for the type of system used by the regulatory agencies. Below this level, the reliability of the equipment does not exist. Therefore, the State has established the methods for sampling, confirming samplings, etc. At an action level of 4 ppb, it is the obligation of a municipal water supplier to advise the public and the legislative body that water may be delivered at this action level. He stated that this information is being provided to the public so that they can make choices. The action level also requires the City to shut off wells at 10 times the action level or when it reaches 40 ppb. He indicated that the City Council has adopted a much more prudent and conservative approach and has directed that wells be taken off line. He stated that four wells have been removed from service. This has posed a problem for the City in its water supply. He stated the City's appreciation in the community's cooperation for water conservation. He indicated that a status report will be presented this evening on the efforts to bring two wells back on line by providing packaged perchlorate treatment plants that will ensure that no perchlorate will be delivered from these wells. He said that the City is proud to be delivering water to its customers that meet or exceed state and federal standards.

Mayor Kennedy announced a tribute dinner/benefit honoring Roger Knopf, an individual who makes Morgan Hill the wonderful community that it is. The tribute dinner will be held on August 2, 2003 at the CordeValle Golf Club at 6 p.m. sponsored by Leadership Morgan Hill.

Council Member Sellers stated that this Council has undertaken a very aggressive approach to testing perchlorate and has gone well above any legal requirements. The Council has taken a conservative approach to any detect levels required of the City. He said that the City is doing a lot and taking a strong stand in this issue throughout the community only to have these types of accusations leveled. He said that sometimes, in trying to deliver factual information, the entire picture is not given. He felt that it was important for the Council to make sure that the public is aware that every member of this Council takes this issue very seriously and that it has spent a lot of time and energy on this issue. He felt that the Council has always errored on the side of conservatism in making sure that everything that can be done is being done.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Chang requested that item 16 be removed from the Consent Calendar in order to allow the City Manager to provide a brief report on the Tennant and Nordstrom perchlorate removal plants. City Clerk Torrez informed the City Council that revised minutes for the June 24, 2003 meeting have been distributed for its consideration.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-15, 17 and 18, as follows:*

1.     **JUNE 2003 PRELIMINARY FINANCE AND INVESTMENT REPORT**  
***Action:** **Accepted** and **Filed** Report.*
2.     **APPROVAL OF 2003/2004 SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY (SCRWA) BUDGET**  
***Action:** 1) **Approved** the 2003/2004 SCRWA Budget; and 2) **Adjusted** the Adopted 2003/2004 City of Morgan Hill Sewer Operations and Sewer Impact Budgets as Detailed in Exhibits A & B.*
3.     **VOTING DELEGATE FOR 2003 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**  
***Action:** 1) **Approved** Appointment of Mayor Kennedy as the City's Voting Delegate and Mayor Pro Tempore Chang as the Alternate Voting Delegate to the League of California Cities' Annual Conference; and 2) **Directed** the City Clerk to Complete the Voting Delegate Form and **Forward** Said Form to the League of California Cities.*
4.     **APPROVAL OF RECLASSIFICATION RECOMMENDATION FOR ASSISTANT PLANNER AND ADOPTION OF REVISED CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR THE BUILDING INSPECTOR/FACILITIES MAINTENANCE COORDINATOR POSITION**  
***Action:** 1) **Approved** the Reclassification Recommendation for the Assistant Planner in the Planning Division; and 2) **Adopted** the Revised Job Description and Salary Range for the Building Inspector/Facilities Maintenance Coordinator in the Building Division.*
5.     **EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES**  
***Action:** **Authorized** the City Manager to Execute an Extension to the Consultant Services Agreement for Contract Planning Services at a Cost Not to Exceed \$75,000.*
6.     **AGREEMENT WITH THE LAW FIRM OF ENDEMAN, LINCOLN, TUREK & HEATER**  
***Action:** **Authorized** the City Manager to Execute an Agreement with the Law Firm of Endeman, Lincoln, Turek & Heater.*

7. **APPROVAL OF RESOLUTION ELECTING TO BE SUBJECT TO SECTION 22873 OF THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT TO PROVIDE HEALTH BENEFIT COVERAGE FOR THE DOMESTIC PARTNER OF AN EMPLOYEE OR RETIREE**  
*Action: **Adopted** Resolution No. 5689.*
8. **CONTRACT FOR WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR (TPA)**  
*Action: **Authorized** the City Manager to Execute a Consultant Service Agreement for Third Party Administration of Workers' Compensation at a Cost Not to Exceed \$35,000.*
9. **CITY VISIONS PRINTING**  
*Action: **Authorized** the City Manager to Execute a Purchase Order in the Amount of \$21,890.11 for City Visions Printing and Film Development.*
10. **APPROVE SOLE SOURCE PURCHASE OF WATER METERS**  
*Action: 1) **Approved** Purchase of Water Meters, Meter Parts and MXUs from Invensys Metering Systems (Formerly Sensus Technologies) in Accordance With Section 3.04.120.A(4) of the Municipal Code – Brand Names or Equal Specification, and Section 3.04.150.C – Sole Source Purchases; and 2) **Approved** Purchase Order of \$250,000 to Invensys Metering Systems for the Annual Supply of Water Meters, Meter Parts, and MXUs.*
11. **APPROVAL OF REVISED MAIN AVENUE/ UNION PACIFIC RAILROAD (UPRR) CROSSING AGREEMENT**  
*Action: **Approved** the Revised Main Avenue/UPRR Crossing Agreement, Subject to the Approval of the City Attorney.*
12. **AWARD CONTRACT FOR CONSTRUCTION OF THE MONTEREY ROAD/UNION PACIFIC RAILROAD (UPRR) UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT**  
*Action: 1) **Approved** an Appropriation of \$175,000 from the Current Year Unappropriated Traffic Impact Fee Fund Balance to Complete Funding for this Project; and 2) **Awarded** Contract to Granite Construction Company for Construction in the Amount of \$531,531; and 3) **Authorized** 5% Construction Contingency Funds Totalling \$26,577.*
13. **PUBLIC WORKS MAINTENANCE AGREEMENT FOR SERVICE REPAIR OF SEWER LIFT STATION PUMPS AND STORM STATION PUMPS**  
*Action: 1) **Approved** New Maintenance Agreement for Service Repair for Sewer Lift Station Pumps and Storm Station Pumps; and 2) **Authorized** the City Manager to Execute the Agreement on Behalf of the City.*
14. **PUBLIC WORKS MAINTENANCE AGREEMENT FOR REPAIR AND MAINTENANCE OF TELEMETRY SYSTEM**

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**Action:** **Authorized** the City Manager to Execute the Agreement with Telekey SCADA Systems, Inc.

15. **APPROVE PURCHASE ORDER FOR REPLACEMENT OF TWO SEWAGE SUBMERSIBLE PUMPS AT “C” LIFT STATION**

**Action:** **Approved** the Purchase of Two Sewage Submersible Pumps in the Amount of \$20,440.58.

17. **ACCEPTANCE OF MAIN AVENUE WELL DRILLING PROJECT**

**Action:** 1) **Accepted** as Complete the Main Avenue Well Drilling Project in the Final Amount of \$135,077; and 2) **Directed** the City Clerk to File the Notice of Completion With the County Recorder's Office.

18. **MINUTES OF JOINT SPECIAL CITY COUNCIL AND SPECIAL PLANNING COMMISSION MEETING OF JUNE 24, 2003**

**Action:** **Approved** the Minutes, as Amended.

16. **STATUS REPORT ON TENNANT AND NORDSTROM PERCHLORATE REMOVAL PLANTS**

City Manager Tewes stated that staff has provided the Council with copies of the City's comments to the Regional Water Quality Control Board on the report and response from Olin Corporation. In the City's response, it suggests that Olin Corporation has not fully complied with the orders of the Board by not developing plans and schedules for the basin-wide clean up of the perchlorate plume that is at least 8 miles long. He stated that staff will continue to work with the Board to ensure that Olin Corporation takes all the appropriate steps, expeditiously, to begin the clean up of their site and of the ground water basin that will impact the City's wells. He indicated that four city wells had detects of perchlorate over the past few months and have been taken off line. He said that the Nordstrom and Tennant wells have important roles to play in the City's overall water system. He indicated that the Nordstrom well is the largest producing well. With it being off line, the City had to encourage water conservation. However, the Nordstrom well is being outfitted with a perchlorate treatment plant. He said that it is staff's expectation that this system will be operational on Friday or Saturday. When this occurs, the City will be able to add 1,000 million gallons per day to the water supply system and that this water will be assured to be perchlorate free. The Tennant well, south of the Olin site, serves another important function. If a treatment plant can be added to this well, the City can add to the water supply. He stated that the City will be the first private party to begin the clean up of the plume if it can begin pumping the Tennant Avenue well. He indicated that it is anticipated that the Tennant Avenue well and its perchlorate treatment plant will be on line in August.

**Action:** **Information** Only.



## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 19, as follows:*

19.    **AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS, WATSON & GERSHON)**

**Action:** **Authorized** *Executive Director to Execute Consultant Agreement for Legal Services in Fiscal Year 2003-2004 with Richards, Watson, and Gershon in the Amount of \$65,000.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 20-21, as follows:*

20.    **MINUTES OF JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING OF JUNE 25, 2003**

**Action:** **Approved** *the Minutes as Written.*

21.    **MINUTES OF JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF JULY 2, 2003**

**Action:** **Approved** *the Minutes as Written.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

Mayor Kennedy recommended that agenda item 23 be considered at this time. He indicated that he met with the applicants for the Barrett-Odishoo project this afternoon and that they have a proposal that would affect all three appeal applications.

Council Member Tate and Mayor Pro Tempore Chang indicated that they would be recusing themselves from agenda items 22, 23 and 24 as they own property within 500 feet of these applications. Both excused themselves from the Council Chambers.

**Action:**        *It was the consensus of the City Council **to consider** agenda item 23 at this time.*

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**23. MEASURE P APPEAL APPLICATION AP-03-02: BARRETT-ODISHOO – *Resolution No. 5691***

Planning Manager Rowe presented the staff report, indicating that the categories being appealed are the Public Facilities Category (request for 2 additional points for full street improvements); and Quality of Construction. He informed the Council that staff has distributed a revised resolution that includes expanded findings for this project, citing the five rating factors that apply to this project. Under the Lot Layout category, the project was considered to have an above average but not a superior layout by the Planning Commission. He indicated that it is being recommended that there be no change in the project's total score and that the score remain at 178.5.

Mayor Kennedy opened the public hearing.

Alexander Henson spoke on behalf of the appellant and addressed two separate arguments. The first argument focuses on the scoring and the Lot Layout category. He indicated that all the project needs to do to equal the score of the lowest project receiving allocation is to attain an additional point. He contends that the project does not have three minor problems that precluded the project from receiving the one extra point under Lot Layout. He felt that the number of driveways at 30% of the project would be a superior design. He went back to the Planning Commission to ask that they define what would be a superior lot layout. He did not understand the distinction of having the driveways adjoining with a strip between them. He did not believe that the requirements were being applied fairly when it comes to attached dwellings. He stated that other projects have been scored without any reference to adjoining driveways even though they provided adjoining driveways and attached dwellings in the scoring process. He requested that the Council provide the additional point. He submitted a letter relating to the request for this point. He indicated that he has come up with a proposal for a different way to allocate allotments. He distributed a table that would apply to allotment distribution for Fiscal Year 2005-06. He noted that application MP-02-03 would receive 29 allotments in 2005-06 and no allotments in 2006-07. Under his proposal, the allocations for this Measure P application would be left out. He is proposing that for application MP-02-12: Oliver-Borello, 2 units be subtracted from their allocation in 2005-06 and 2 units be subtracted from MP-02-15. Instead of having all of the 20 units in Fiscal Year 2005-06, that application MP-02-25 be granted 16 units in Fiscal Year 2005-06 and 4 units be carried to Fiscal Year 2006-07. This alternative proposal would enable the Council to have 8 additional units to allocate in 2005-06. He noted that there are two projects that just missed the cut off for allocations: this project and the Dempsey project. He suggested that rather than conducting a rescoring for this project or the Dempsey project, the Council could allow two more affordable housing projects to commence construction. He noted that this project as well as the Dempsey project are attached dwellings and are low cost housing units needed in the community. He stated that item 33 on this evening's agenda would be discussing revisiting the 2005/06 allocation. He noted that staff is recommending that any additional units that might become available be given to approved projects. If this is the course of action that is followed, Mr. Schilling and Mr. Oliver can get their allocations back and that this project can receive additional allocations. This would benefit the community by having a broader housing mix. He stated that he discussed his proposal with the City Attorney who indicates that there may be some procedural issues with the chart presented.

City Attorney Leichter stated that she was presented with this issue this afternoon and had some discussions with Mr. Henson and Mr. Tichinin regarding this issue. She said that upon a cursory review, it appears that the appeal before the Council is on the appeal of the scoring issue. There is an issue whether the Council can even consider the allocation issue tonight by virtue of how the appeal was agendized and that she did not recommend that the Council do so. In terms of the allocation issue, she felt that it was appropriate for the Council to proceed with the scoring appeal this evening but that the allocation distribution is something that staff needs to look at in much more detail because there are a host of legal and policy implications stemming from this decision. Staff requests that any appeal on this basis be deferred until staff has the opportunity to look at the issue.

Council Member Sellers noted that the City Attorney's analysis seems to indicate that there would be a necessitated continued delay on the allocation issue. He inquired as to the implication in delaying the allocations.

Director of Community Development Bischoff stated that typically, the City grants allocations in April and resolves any appeals by May. He said that developers are anxious to proceed with the Measure P process and their project entitlements in order to commence construction during the dry season. With the delays already experienced, it is delaying the start of projects. If staff is to return with this matter to the Council, this item would be continued to August 20. If the Council is just asking that staff determine whether or not the Council could do anything with respect to scoring, staff could return to the Council on July 23. He said that should the Council have the discretion to allocate allotments, the City would have to provide notice to other Measure P applicants of an upcoming meeting and hearing of this matter and that they be given the opportunity to participate. This notification process could not happen within a week period of time.

Mayor Kennedy stated that he read the Residential Development Control System ordinance and that it clearly states that appeals for allotments go to the Council. The Council can review these allotments and that the decision of the Council on the award of the allotments is final. He expressed concern that if the planning commission makes a series of allocations that cannot be changed, the appeal process would be worthless, resulting in an invalid appeal process. Should the Council agree to change the scores, he expressed concern that the allocations have already been made. Furthermore, developers who have allocations believe that they have been given these allocations and that the ownership of these allocations becomes sacred. He did not believe that the process is working the way it was intended.

City Attorney Leichter said that the actual language contained in Measure P is something that staff has been dealing with for a while. She said that Measure P refers to the allotment evaluation process. She said that there is a linguistics clarity issue that staff has had a long standing interpretation that allotments have never been appealable to the Council. This has been placed within the discretion of the planning commission by Measure P. She informed the Council staff will be discussing this issue with outside counsel who is redrafting Measure P. Staff will be coming back to the Council to ask what it believes is fair and consistent in terms of correcting this issue.

Mayor Kennedy requested that staff look at the language in the initiative itself.

City Attorney Leichter said that staff needs time to look at the language of the initiative and that hopefully it will be corrected in the future.

Director of Community Development Bischoff felt that the appeal process in place works. Should the Council grant additional points, the Council would remand the appeal applications back to the planning commission and the planning commission would reallocate according to the new scores that have been applied by the Council.

Council Member Sellers said that it would seem that you would go through the appeal process before going through the allocation process. He wanted to know why the allocations were “tentatively” awarded.

Director of Community Development Bischoff said that when the planning commission concludes its review and makes its allocation distribution, it does not know whether there will be appeals. When there are appeals, the City will not accept an application for processing until the appeals have been resolved. Should the appeals be resolved such that the scoring would change and a different project would receive allocations from those that the planning commission proposes, it would have to go back to the planning commission for their amendment to the allocations. He felt that this was a process that works, but that there are numerous steps involved.

City Attorney Leichter said that staff recognizes that there may be a procedural glitches and that staff will be looking at correcting these as it recommends changes to Measure P. Perhaps speaking to those who helped draft the original Measure P would help clarify the original intent of the language.

Dick Oliver indicated that he represents three of the projects that are in this year’s Measure P process. He stated that he was approached this morning by the applicant’s attorney and asked if he would give up the units for two of his projects. He stated that he could not because both projects involve outside individuals (Borello family and the Ruge family). He advised that he did not have the authority to do so nor was it proper to do so. He said that in the ten years of Measure E and Measure P application processing, he has never had an applicant come at this late stage trying to upset the allocation process or the appeal process as has been done in this case. He felt that the Measure P process has worked well over 10-years and that the appeal process works. Should the Council wish to grant an additional point, the project would need to go back to the planning commission for reconsideration. However, he felt that it was improper to upset the allocation. He noted that the applicant has had two full hearings before the planning commission and that he had time to make the best case to score higher on these points. The applicant also had an opportunity to present a formal preliminary Measure P application to staff and have the project scored before the formal application was submitted. The problem with site planning and other issues could have been resolved resulting in the project attaining a higher point score had the applicant gone through the preliminary review process. He stated that everyone in the development community have missed allocations in past years because something was missed. Developers learn by going through the process and improve projects in the next round to achieve higher scores. He felt that this project would make corrections and will more than likely receive allocations next time around. However, he did not believe that there was justification to override the actions of the planning commission. By doing so, the City Council discredits the planning commission and its integrity. He

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informed the Council that he contacted Scott Schilling to inquire if he would be willing to give up allocations. Mr. Schilling requested that he inform the Council that he was not willing to do so.

Bruce Tichinin indicated that he also represents the appellants in this matter. He felt that both Mayor Kennedy and Council Member Sellers raised good points about the appeal process: 1) what is the use of increasing the score if it does not give the appellant the allotments being competed for; and 2) what is the value of winning on appeal if you do not receive the allotments, but instead, it goes back to the planning commission for realignment of the allotments. If a project increases its score and allotments are based on the score, a developer should automatically receive a qualification that does not require re review by the planning commission. He felt that this proposal represents a way for the Council to award allocations to high quality projects and provide affordable housing. He felt that this was a more important consideration than those raised by Mr. Oliver. He encouraged the Council to give this issue serious consideration.

Ralph Lyle stated that he was addressing the City Council as a citizen and not representing the planning commission. He said that the award of allotment by the planning commission was a contingent set of allotments that would take affect if the rankings were not changed. If the Council agreed with the scoring change, the application would automatically go back to the planning commission for reallocation of allotments. He felt that the process is valid from this point of view. The advantage of this process is such that if there is no change in the ranking of a project, the process has saved several weeks by not having to go back to the planning commission. He stated that there is another Measure P issue. He said that Measure P states that you start with the allotment and go from the highest ranking project down to the next project(s) in line. In the Measure P update, the language is being changed to give more flexibility to the planning commission. He said that in this year's competition, the City strained the language of Measure P as far as it can be stretched. To state that the City should include another project or two; taking units away from ongoing projects to create a larger on going project situation, is the wrong thing to do. If the score changes, he would recommend that the City cut additional projects and give more allotments to the higher scoring projects. This would result in current projects loosing allotments.

No further comments being offered, Mayor Kennedy closed the public hearing.

Council Member Carr inquired why the City was so late in the calendar year in considering the appeal process.

Planning Manager Rowe indicated that the opportunity to appeal the evaluation occurred following the conclusion of the evaluation process in April. He stated that appeals were considered by the Council on May 28. The appeal process is late because the appeals were referred back to the planning commission and that the earliest that they could schedule a special meeting was June 17. The appeals were to return to the Council on July 2 but that they were continued to today's date due to a mix up in the public notice mail outs that necessitated readvertising of the hearings for tonight's meeting. He indicated that the May hearing was a normal timeline for the Council to hear appeals.

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Mayor Kennedy noted that Mr. Henson indicated that other projects were awarded points that had similar types of driveways.

Mr. Henson said that if you look at any of the projects that have attached dwellings they also have adjoining driveways. It was felt that this project did a good job of not having a great number of adjoining driveways (e.g., 30%). He said that the Dempsey project is indistinguishable from this project and it received a superior rating in lot layout.

Mr. Tichinin said that it was his understanding from Mr. Burgos that of the projects in this competition that contained attached driveways, this project contained the least number of them and was the only project that was scored down for this characteristic. Therefore, he felt that there was an inconsistency in the scoring process.

Council Member Carr noted that this project had a number of corner lots that had an opportunity to separate driveways. He inquired whether the other projects utilized all the corners and all the opportunities to separate their driveways.

Vince Burgos said that there is always an opportunity to separate driveways but that it has not been an absolute requirement or ordinance that requires a specific number of driveway separations. He said that this project has the highest percentage of detached driveways of any project that he has submitted through this process.

Mr. Henson felt that 30% was the least number of adjoining driveways of any projects submitted that are of an attached dwelling product. He wanted to know why this project was penalized while others were not.

Council Member Carr noted that the project had an opportunity to separate driveways on two corners.

Mr. Burgos indicated that providing additional detached driveways would eliminate on street parking. He addressed the reasons the corner lots were not designed to provide side driveways (close returns, landscape/buffer area, provide private/nicer entrance). He said that one lot was penalized because it was felt that one unit appeared to be out of scale with the rest of the product.

Planning Manager Rowe said that a project can have two minor deficiencies in the layout and receive a superior rating. The Dempsey project may have been rated down for having adjacent driveways, noting that it was only 1 or 2 minor deficiencies which still garnered two points. He indicated that staff looked at the San Pedro project earlier today and that it was noted that it had 22% of the lots with parallel adjacent driveways and that it was rated as a minor deficiency.

Mayor Kennedy felt that it would be appropriate for the Council to focus on the allocation rather than the award of points. He noted that there is an appeal of points and an appeal of the award of allotments. He said that it was difficult for the Council to go back through the entire history that the planning commission went through in conducting the evaluation. He felt that there was the issue of fairness and that the Council needs to ensure that a fair and equitable process is followed. It was his belief that the

Council should have the right, based on an appeal, if there are issues that need to be taken into account, to override the planning commission's action. He did not believe that this should be taken away from the Council unless it is taken away by voter initiative. It was his belief that the Council needs to review the authority it has in the allocation process. He recommended that the Council defer action on the appeal until it receives a legal opinion.

Council Member Carr stated that it was his hope that the Council would not delay the Measure P process further as there are many individuals interested in the process and how they can move forward. He said that it appears that the Council has been reviewing an appeal of a scoring process for specific categories that were scored since May. He noted that the Council has never examined the allotments nor have considered an appeal of the allotments. He suggested that the Council concentrate on the scoring. Should the Council decide that projects should be granted additional points, the planning commission would need to take a look at where the projects fall within the allocation process. He noted that it has been stated many times that the planning commission gave out allocations based upon a final review/final confirmation of points. The planning commission gave the allocations with the idea that this would speed up the process if there were no changes to points. He said that it may have been an incorrect strategy at this point and the Council would not have the added pressure of allocations already being assumed while there are appeals still to be heard. He felt that the Council needs to concentrate on the points for these particular projects and that the allocation process be determined by the planning commission, should the Council grant additional points.

City Attorney Leichter stated that it is within the Council's discretion to put the appeals over until it receives further advice on the allocation appeal issue. She stated that there is a legal question as to whether the appellants have properly appealed the allotment issue. It was her understanding that this was not part of the written appeal filed, it was never raised at the planning commission level, and that it has only been recently raised. She said that in general, the appellant would be limited to appealing those issues that were placed in their written appeal. She stated that there is a significant question whether this is a proper basis for an appeal.

Mayor Kennedy clarified that he requested that this item be pulled out of order to discuss the allocations and whether the Council needed to receive another view point on the allocation. He said that the Council could hear the other projects before making a final decision.

Council Member Sellers recommended that Council focus on the direct appeal issues that were raised and that they be resolved. He felt that the one issue that warranted further discussion dealt with the driveways (coverage) and whether this minor issue should be eliminated, allowing the project to receive another point. He said that the key factor was whether projects were dealt with fairly and equitably. He felt that this was a high bar and that he did not see this project being able to receive another point.

Mayor Kennedy stated that he would be willing to consider granting a point to this project for the driveway issue.

Council Member Carr noted that at the last Council meeting he was critical of the planning commission under the Quality of Construction category because he did not have an idea on how this category was

judged by the commission. Staff has explained the scoring of this category and that he understands it a lot better. He felt that this was an area the Council has given the commission a lot of flexibility in scoring this category. He said that he could not judge this category in order to grant an additional point. The issue comes down to the Lot Layout category and whether this category was applied even handed with other projects. He noted that Planning Manager Rowe identified another project that had 22% adjoining drives that was also given the same minor design flaw. He remains concerned because this is a project that provides a lot of affordable housing that is needed in the community. He said that there is the ability for this project to make a couple of changes in the Lot Layout category in order to improve its score. He noted that the Council needs to judge projects based on today's criteria and categories. He was not as concerned about adjoining driveways and recommended that the Council look at this issue in the future. He stated that he would feel uncomfortable adding a point to this project without reviewing other projects as well.

Council Member Sellers said that although he has concerns about some of the points and how they are dealt with, the fact is that the rules are in place. He felt that the Council should review whether some of the points are precluding the City from having the kind of housing stock that is found desirable for the community. He felt that it was the Council's job is to go through the appeal process this evening. He indicated that he has met with the applicant several times and that he has spent a lot of time reviewing the appeal. He felt that this was an equitable process and that he did not see a reason to grant an additional point.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 2-1 vote with Mayor Kennedy voting no and Council Member Tate and Mayor Pro Tempore Chang absent, **Denied** the Appeal and **Adopted** Revised Resolution No. 5691 with Findings.*

Council Member Carr recommended that item 33 be considered upon the conclusion of the three appeal applications to allow staff to respond to the additional allocations that may become available as alluded to by one of the appellants.

**22. MEASURE P APPEAL APPLICATION AP-03-01: EAST DUNNE-DEMPSEY –  
Resolution No. 5690**

Planning Manager Rowe presented the staff report, indicating that there are five categories for which the applicant is requesting point adjustments: 1) Schools (no change in points recommended); 2) Public Facilities (planning commission recommends 1 additional point); 3) Quality of Construction (planning commission recommends 1 additional point); 4) Circulation Efficiency (no change in points recommended); and 5) Natural and Environmental (no change in points recommended). With the two point adjustment recommended by the planning commission, it would result in a project total score of 179. However, it would not raise the project's total point score sufficiently to place it in a position to receive a building allocation. Staff recommended that the appeal be denied and that the Council adopt the resolution with the modified scoring.



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Mayor Kennedy inquired as to the basis in which points were awarded under the Natural and Environmental category for other projects?

Planning Manager Rowe said that there may have been other opportunities for the project to gain points for other natural features. He stated that the opportunity to earn points under this category comes from the presence of large oak trees and other trees on site. In this application, the applicant indicated, without any qualifiers, that all trees on the site would be preserved. When looking at the grading plan, it was noted that 8-10 trees would be removed. Therefore, not all trees would be preserved on site. As the application did not represent the preservation of all 18 trees, only 1 point out of the two points was granted. The Planning Commission recommending awarding 1 point for preserving some of the trees.

Council Member Carr requested clarification on how the planning commission scored the Quality of Construction category.

Planning Manager Rowe indicated that the planning commission wanted to make sure that the 1 point made a difference, noting that in past years, projects have been able to achieve the maximum 15 points under Quality of Construction without reliance of this point. He stated that that the criterion was modified a year ago such that in order to attain 15 points, a developer had to attain the 1 point from the planning commission. The planning commission had to determine what would factor into projects receiving the 1 point as the criteria states “overall excellence.” The commission came up with 5 rating factors. It was determined that there was not a consensus of what would be the number 1 factor. Each planning commissioner assigned a weight factor to each of the 5 ratings. Following individual scoring by the planning commission and the scores were tallied; projects had various members of the commission scoring the project. The commission decided that any project that did not receive more than 4 commissioners scoring the project would not represent a quorum of the commission. The commission decided that they could not include an average for these projects. When the application went back to the planning commission on appeal, the commission were of the opinion that if 3 commissioners voted on a project, it should have required other commissioners to consider giving a score to the project, providing an average to the project. The commission did so when given the opportunity to look at the project’s scoring.

Mayor Kennedy opened the public hearing.

Janet Dempsey addressed the Jasper Park project and stated that the basis for her discussion was under the Natural and Environmental category. She indicated that she needed clarification regarding what was meant by “substantially preserving the trees” in order to receive 2 points. She noted that there was also discussion about out rock croppings, seasonal trees, slope terrain, etc. that could gain an extra point. She inquired whether the only way to achieve 2 points was to substantially preserve trees and meet the rest of criteria with regards to rock out croppings, etc., or whether you can receive the 2 points from substantially preserving trees. It was her belief that this competition was about the trees under the Natural and Environmental category and that there was no regard giving to rock out croppings or things of this nature. She confirmed that her narrative stated that the project would save all trees. However, she sent out a clarifying letter that stipulated that it was the intent of the project to preserve significant trees and not the walnut, prune, and/or apricot trees nor the shrubby plum trees. If you take away the

walnuts and other orchard products, this project proposes to save a substantial amount of trees. If the project saves a substantial amount of trees, she felt that the project meets the criteria and should receive the 2 points as per the response received from staff from the narrative. She referred to the DiConza project located to the south of this project, noting that it received 2 points for substantially preserving trees without consideration of the rock formations, seasonal creeks or sloped terrains. She stated that she has yet to receive a reasonable justification under this category.

Ms. Dempsey stated that it was her opinion and that of her partners that everyone is hesitant to grant the point because the project would bypass Dividend Development who would in turn lose its allocation. She said that the planning commission granted the allocation contingent upon the outcome of the appeals. Had the planning commission known that she would be pursuing the appeal they may have conducted themselves differently and held off on granting the allocations. She said that the trees proposed for preservation would provide a nice buffer from the proposed project and the First Community Housing project. She stated that it has always been the intent to save the significant trees as part of project development. She indicated that the Odishoo project received 2 points for preserving significant trees while removing a walnut orchard. She requested consistency in the scoring under the Natural and Environmental category. She was finding an inconsistency in the scoring process and that she has a hard time answering to her partners. She requested a reasonable justification as to why the project did not receive the 1 point. She indicated that there were other projects that received 2 points that do not have outcroppings or these types of elements.

Dick Oliver felt that the purpose of the appeal process was to clear blatant errors and obvious mistakes. He felt that under the public facility situation, there was a clear misunderstanding between two members of the planning commission who voted for the additional point for the detention basin, noting that this was a 3-2 planning commission split vote. He stated that he met with two of the planning commission members who voted for the points. Both have since stated that had they understood that new material was being presented, they would not have agreed to grant the additional point. He noted that the criterion clearly states that the applicant had to state in the narrative the area to be benefited by the detention basin and how it was to be connected. He said that the only time that these two items came up was at the appeal hearing and that they were not included in the narrative or at any other time prior to the appeal. He stated that prior Measure P competitions did not allow the submittal of new material. It has been indicated that a mistake has been made and that the point should be taken away because the point was applied based on new material and that it could not be considered on appeal. Regarding the Natural and Environmental category relating to the trees, he felt that staff has addressed the issue. He indicated that at no time has the planning commission approved a stub street that is not attached to a project.

Planning Manager Rowe read the criteria as listed under the Natural & Environmental category, noting that the criteria is not dependent on trees and/or rock outcroppings, creeks, etc. If a project does not preserve trees, a point is lost. If there are no trees to be preserved, there is no opportunity to gain a point. He stated that the criteria states that if a project's site substantially preserves the existing terrain and other natural ground features, it can receive up to 2 points. He said that typically, absent any other natural features other than trees, the project would receive two points for preserving all trees. He noted that the applicant stated that the project has trees on site and that the homes would be sited to preserve

“all” trees. When staff looked at the plans, staff noted that 10 trees would be removed and 8 trees would be preserved. He stated that the criterion does not distinguish between significant trees, orchard trees or any other types of trees; it simply states “preserves trees.” Therefore, the retention of 8 out of 18 trees does not represent a substantial preservation of trees. The project was given one point under this criterion. He informed the Council that the City has a significant tree ordinance which exempts orchard trees from a tree removal permit. He said that the City’s municipal code identifies a distinction between significant trees and other types of trees but not under the Measure P criteria. Measure P simply states the preservation of trees and does not differentiate between significant, non significant or orchard trees. He noted that there have been some residential projects that incorporated orchard trees into the projects’ design.

Ms. Dempsey inquired when the City started to count walnut trees and when an orchard product was included in the tree count. If there is a huge value placed upon orchard trees, she felt that more should have been done to save them. She recollected a development that took a walnut orchard and saved them as part of a development. She felt that walnut trees are one of the worst neighborhood products that you can get because they are toxic and compete with other vegetation. She said that it is difficult to retain walnut trees in neighborhoods. If there was any kind of information raised during the planning commission meeting, it was only to clarify that she has a pond design that works. She also raised the association with First Community Housing and how a retention pond that reserves 7.5 acres for a mitigation measure that could serve to benefit an existing project that does not currently mitigate; or a future project that would not intend to mitigate. This point was raised to further argue staff’s belief regarding the surrounding properties. She noted that there is a 20 acre property zoned R-2 could benefit from a non connected mitigation pond design in the future. She said that this project can create the same benefit for the channel without providing a physical connection. This was made clear to the planning commission and she felt that they understood what she was trying to do to meet the intent of the criteria.

Mark Grzan felt that there appears to be a conflict between the heritage tree ordinance and the City’s municipal code because the ordinance recognizes the importance of some trees and that this ordinance is not extended to Measure P which presents a conflict to developers, the planning commission and staff.

City Attorney Leichter stated that the issue of the heritage tree ordinance versus the criterion under Measure P are separate issues.

No further comments being offered, the public hearing was closed.

Council Member Carr referred to the Public Facilities category as it relates to the pond issue. He stated that he did not understand the relationship to the Monte Villa and the Twin Oaks projects. He said that in Measure P, when a precedent is set, the City tries to look at how the categories in the criteria apply and change it for future competitions. He suggested that changes to the criteria apply under this category. He inquired whether the Monte Villa Twin Oaks project received approval for the larger sized pond that set a precedent where the City went back and stated that it had to take a look at the criteria.

Planning Manager Rowe indicated that staff and the planning commission used the criterion that is currently written in this case. He noted that the Dempsey narrative did not mention the other projects as

a precedent for the drainage concept being introduced. In the appeal, the applicant cited these two projects as an example of how this drainage concept was used in the past and where points were given.

Council Member Sellers said that it appears that the conflict lies with the applicant indicating that they would be providing a public facility and providing an example of where it might provide a benefit. However, if the project would only be benefiting the adjacent project, you could draw another conclusion. He said that the criterion is not abundantly clear. However, due to the nature of the facility being proposed, it would be, by nature, a regional facility or have a multiple benefit to the region surrounding this project.

Planning Manager Rowe clarified that if the property located across the street were designed such that a storm drain line went under East Dunne Avenue to connect to this facility, it would take storm water runoff to a holding area instead of taking it down a storm drain line to the Butterfield Channel. The problem with this is that it represents an area that is beyond what was described in the appellant's narrative. However, if the appellant changes their narrative in the next Measure P go around, and that there is benefit to the adjacent land, it could be acknowledged. The Planning Commission decided to look at other trees such as orchard trees and give acknowledgement of the preservation of trees.

Council Member Sellers felt that the Council needs to address Ms. Dempsey's concern relating to the trees. He did not believe that all trees are equal. He noted that the planning commission did not make a distinction between trees. He felt that it is the Council's job to determine whether the process was fair and equitable. Even though he does not necessarily agree that a scrubby prune tree is the same as a beautiful oak tree, he felt that this was the way the planning commission judged it and this is how it should be addressed at this time. However, the Public Facility category was a different matter. He felt that there was an attempt to offer a regional facility such that it would mitigate, at some point, to add run off into the Butterfield Channel. If there was ambiguity in the narrative, he felt that it was an attempt for the applicant to provide an example. Therefore, he would be willing to give the applicant the benefit of doubt under this category.

Council Member Carr felt that it is the Council's job, in this appeal hearing, to consider the points and the areas being contested to determine if they were interpreted correctly. He felt that the Council found a couple of areas in the criteria that need clarification for future scoring. He said that it appears that the same rules were applied to the 23 Measure P projects and that they were scored under the same literal interpretation such as "a tree being a tree." He noted that under the Natural & Environmental category it simply states "preserves trees." He stated that he may not necessarily agree with this and that he appreciates the fact that the applicant is saving the significant trees and not the other trees. He felt that Mr. Grzan raised a good point in that there are some inconsistencies with City ordinances. He recommended that ordinances be tied better so that there is clarification as to the definition of what is meant by a significant tree. He felt that other projects were scored in a similar manner. He noted that staff recognizes that perhaps a scoring mistake was made in another project but that it was one that the project should have received less points. Under the public facilities issue, he felt that there is great value in having an oversized pond to serve a regional benefit. He said that one of the planning commissioners agreed that the project was not meeting the criteria but that he liked the idea and voted for it. He was not sure that this is the way the City should be dealing with appeals. He felt that the City needs to make

sure that the criteria are applied consistently. He was not sure that it was in this case. He felt that this was an area that the City needs to look at as well. He said that there is still some confusion on how the planning commission scored projects under Quality of Construction. He said that he was troubled that the planning commission chose to score projects that were of a certain minimum points that had the potential of receiving allotments. He noted that some commissioners chose to score this project under this category while others chose not score this category. He felt that the planning commission needs to be real sure that if they are going to be given the opportunity to have discretion in awarding this point that it be applied across the board. In this case, not enough planning commissioners applied the score to make it count. He indicated that as part of the appeal process, the planning commission had a long discussion on whether they should score this category after the fact. He was not sure whether this was fair to other projects. He felt that the planning commission needs to think this process through and decide whether it still wants the opportunity to apply this point. If so, the planning commission needs to decide how it will apply the point fairly across the board. He stated that he was not pleased with the way this worked out. He did not see where this project would receive enough points to be able to send it back to the planning commission for allocation purposes.

Council Member Sellers felt that the appeal process requires the Council to specify the reasons for denial, should the Council decide to deny the appeal. He stated his concurrence with the planning commission's recommendation on points in the two categories.

Mayor Kennedy felt that all three of the appeal projects were good projects as they would provide affordable housing and would be good infill projects as well. He stated that he would like to find a way to give the three projects points so that the City does not lose these three projects. He understood that the Pinn Brothers' project would not score enough points to be close to receiving allocations. He noted that the City has focused its attention on trying to build out partially completed projects and that this has led to a lot of points being awarded to on going projects. He felt that this prevents the City from starting other new projects that may offer a lot to the community. He suggested that some allotments be set aside for Council discretion.

Council Member Sellers said that any additional allocations that would be derived from the next Residential Development Control System ballot measure would provide a unique opportunity to look closely at building allocation opportunities. He felt that it was important to talk about the points and the specifics. He felt that a project that is within a point from receiving allocation would increase the possibility of the project receiving allocations sooner rather than later.

Council Member Carr felt that this is an important infill development. He stated that he would like to find ways to grant allocations to affordable projects. He said that the appeal process before the Council deals with the points and does not deal directly with the allocations. He felt that the Council would have the opportunity to discuss the allocation distribution later in the evening. He did not agree with the Public Facilities position that the Planning Commission took in awarding the additional point as he did not believe that the project met the literal interpretation of the criteria. He did agree that it would be an added benefit but that it does not meet the literal interpretation under Public Facilities. He felt that all projects were scored literally under this criterion. He did not suggest taking away the point under

Quality of Construction because it is an area that the Council allowed the planning commission a lot of flexibility. It is his hope that the planning commission understands the Council's interest in getting this straightened out before the next competition.

Mayor Kennedy stated that he would support the additional two points as granted by the Planning Commission.

Council Member Carr noted that even with the 2 additional points it would not move the project toward receiving allocations. He inquired whether the total point score for the project in this competition would be important for future competitions.

Planning Manager Rowe said that point scores are bench marks for future competitions. He noted that the Measure P criteria are revisited annual and that changes will have been made to the scoring criteria. Therefore, the project's future score would depend on how much of the criteria still applies. Therefore, he could not provide the Council with a definite answer in terms of how well this project will score in next year's Measure P process.

Council Member Carr stated that he would support the resolution without the 1 point under Public Facilities.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 2-1 vote with Council Member Carr voting no and Council Member Tate and Mayor Pro Tempore Chang absent, **Denied** the Appeal and **Adopted** Resolution No. 5690 with Findings.*

**24. MEASURE P APPEAL APPLICATION AP-03-03: WEST EDMUNDSON-PINN BROTHERS – Resolution No. 5692**

Mayor Kennedy indicated that it was his understanding that the appellant excused himself from the remainder of the meeting.

Planning Manager Rowe presented the staff report and indicated that the Council referred this item back to the planning commission and requested that they conduct a full hearing on each of the items listed in the appeal. He indicated that the appellant was not present at the planning commission meeting to address the specifics of the appeal. He said that the bottom line is that the project contained mistakes in terms of how it was configured based on the two different zoning districts. This resulted in very low scoring in the Housing Needs and Housing Types categories. He felt that these categories can be corrected at the next go around. However, this project is well below the cut off for projects that are in the running for allotment consideration. Upon further planning commission review, the commission is recommending further reductions in the Housing Types category.

Mayor Kennedy opened the public hearing.

John Dossetti stated that this is a common sense project and that he did not know why this project was scored low. He indicated that he was involved in bringing this property into the City because it is a blighted area. He said that the property is located across the street from a new project, 500 feet away from the Vineyard Town Center, it backs up to the George Day residential development, and is located across the street from the Community Park as well as the proposed Indoor Recreation Center. He considered this project to be an infill project.

No further comments being offered, the public hearing was closed.

Council Member Sellers concurred that this is a project that affords an opportunity for infill. He felt that a good thing about the appeal process is that it provided very specific criteria and outlines some of the details on how to make sure that this project receives additional points. He looks forward to seeing this project improve its score next time. He noted that there was a significant gap in the score that the project received and those that will be receiving allotments.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Council Member Tate and Mayor Pro Tempore Chang absent, **Denied** the Appeal and **Adopted** Resolution No. 5692 with Findings.*

Council Members Tate and Chang resumed their seats on the dais.

## **26. ZAA-98-20: SPRING AVENUE-WESTPOL PROPERTIES, LLC (MALONE)**

Community Development Director Bischoff presented the staff report. He indicated that this item would need to be tabled following receipt of public testimony to correct the 300-foot adjacent property owner notification mailing list. He stated that this item would be readvertised for a future meeting date.

Mayor Kennedy opened the public hearing.

Allan Palmer said that the heart of the issue before the Council is whether the City of Morgan Hill would require developers to honor agreements that they have voluntarily entered into. He said that the developer should have been fully aware of the restrictions that were included as part of the approved site agreement when they purchased the project. He said that the homes originally approved through the Measure P process were to be approximately 3,000 square with reasonably sized back yards and are now proposed at 3,300 square feet to 4,000+ square feet. He said that the larger homes require a greater portion of the allowable buildable land, leaving less property for backyards. In addition, he noted that this project received additional building allocations in return for dedicated open space. These extra homes provided for additional profits/revenues to compensate for what would be small, less costly homes that were planned attributed to the small lot sizes. This project was allowed to reduce the width of the right of way to increase lot size in light of the hillside. He said that at the planning commission meeting of September 14, 1999, Commissioner Mueller stated that one of the main goals in redesigning this subdivision was to maintain a view of the hillside. He felt that the current owner was aware of the restrictions or should have been notified by their sales agent prior to purchase of the project of the restrictions. If there was a problem for not knowing this fact, he felt that the developer has to take it up

with their sales agent. Should the City grant the request, it may result in a developer not wanting to honor or abide with their contract with the City. He requested that the Council reject this application. He noted that the current fences behind individual properties extend into dedicated open space. He said that each home has a different amount of invasion into the open space.

Mary Paulson stated that she empathizes with developers as they want to make a profit. However, she felt that the price paid for this profit will be paid for by Mother Nature (e.g., encroachment into the hillside). She inquired who will enforce the encroachment into open space, noting that there is no current enforcement beyond the v-ditch demarcation line. She encouraged the Council to retain the dedicated open space as approved.

No further comments being offered, Mayor Kennedy closed the public hearing.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** this item.*

Council Member Sellers requested that the Council direct staff to investigate the allegations/concerns about the open space area being violated.

## **25.     DEVELOPMENT AGREEMENT APPLICATION DA-03-03: HALE-GARCIA**

Community Development Director Bischoff indicated that due the appeal process, staff was unable to bring this item to the Council for consideration this evening. Staff recommended that this item be tabled and that it would be agendaized for a future meeting date.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** this Item.*

**Action:**        *It was the consensus of the City Council **to consider** item 33 at this time.*

## **33.     HOUSING TYPE DISTRIBUTION AND TERM FOR 2003-2004 MEASURE “P” COMPETITION (FY 2005-2006 BUILDING ALLOTMENT) – Resolution No. 5704**

Planning Manager Rowe presented the staff report, indicating that it is being recommended that the Council authorize a competition be held. Further, that it is being recommended that the distribution of the building allotment for the remaining 51 of the 182 unit total set aside go to the project types identified in the resolution and that the supplemental distribution go to the projects that received allocation. However, should the Council wish to consider an expanded list of projects, the Council would need to modify Section 2.f of the resolution such that it would state that those supplemental allotments would go to projects that participated in the most recent competition for the Fiscal Year 2004-05 and 2005-06 building allotment. Further, if there are any increases in allocations, they would go into the competition process. However, should the City’s population were to increase at a rate greater



than what would be anticipated, staff recommends that the Council not lower the 182 number. This would give projects some certainty that the allocations would be available if they choose to go through the expense and time to compete for allotments.

Mayor Kennedy requested staff clarification about awarding allocations to projects next in line for next year's competition as it relates to amending paragraph 2.f of the resolution.

Planning Manager Rowe recommended that the last sentence of Section 2.f be amended to read: "Any increase in total building allocation be awarded as a supplemental allotment to those projects that participated in the most recent Measure P competition for the Fiscal Year 04-05 and 05-06 building allotment." He stated that this would give the Council the opportunity to consider the next in line project. He clarified that if a project participated in the competition the planning commission could award allotments based on this evening's score and consider whether they want to add projects to the list.

Mayor Kennedy opened the floor to public comment.

Alexander Henson supported the possibility of opening up allocations to those projects that barely missed the cutoff for allotments. The use of the word "participated" would help facilitate this action. He suggested a criteria be included that would help promote affordable housing. He said that the Council could stipulate that "...projects that participated and had a majority of attached dwellings/affordable units for Fiscal Year 2004-05 and 2005-06 in the most recent Measure P competition" be included as part of Section 2.f of the resolution.

Ralph Lyle felt that changing the language to "participated" is good. He felt that the Council could decide later that it wants a special set aside and take this action. However, he felt that inclusion of the language as recommended by Mr. Henson would be a violation of Measure P.

Dick Oliver recommended that the Council retain flexibility and allow the Planning Commission to try and meet the intent. He felt that it would be improper to take 48 units and apply them to these two projects that scored lower, attaining more units than projects which scored higher.

Ms. Dempsey stated that she would be interested in picking up a share of any additional allocations that may become available. She understands that it is probably not right that all the allocations become available just for new projects that are not currently allocated. However, she is making the assumption that the planning commission will make arrangements for the distribution to make it equitable. She felt that this is something that could work because it will bring in two new projects that were close to winning allocations and are considered affordable housing units.

No further comments were offered.

Council Member Sellers stated that he would support the modification to the resolution as recommended by staff. It was his belief that the Council should give the planning commission the opportunity to be flexible and award allotments to the two new projects. However, as it cannot be clarified at this time, he

did not believe that it made sense to try to quantify this by talking about it in terms of being affordable or any other criteria. Should the City wind up with extra units, the planning commission can identify what would make sense and that it would afford the opportunity for some of the projects that were at the edge of the scoring process, and have not yet received allocations, to be considered for allocation as well as for existing projects to be able to gain some possible allocations.

Council Member Carr indicated that he likes the idea of retaining flexibility. It was clear that the three Council Members that participated in the appeal process made it clear that it likes these projects. However, there was a certain way that these projects had to be reviewed. It was his hope that the planning commission will take this into account. He said that the other issue that the planning commission will have to take into account is how the City meets its Housing Element Goals in the City's fair share allocations as these units will be important to meeting these requirements. Building attached, affordable housing units in a certain timeline will be very important. Therefore, this will be another issue that the Council will need to work with developers to make sure that the City is meeting these goals as a community.

Mayor Kennedy encouraged the planning commission to give these appeal projects consideration, particularly the infill aspect of each of the projects. He felt that the three appeal applications have a lot of good qualities in providing the infill closer to the heart of the City.

Council Member Tate noted that he did not participate in the discussion of the appeals and that there is a recommendation to change something on a previous discussion held by the Mayor and two Council Members that he was not allowed to participate in. He was hearing a Council majority support for putting this in the hands of the planning commission to consider a little more than what was allowed in the staff report. He had faith in the planning commission's ability to factor this in and come to the right decision.

Council Member Sellers stated that the proposed amendment would increase the Planning Commission's flexibility with any additional allotments that would become available.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5704, Approving the Total Building Allotment and Distribution, and Authorizing Measure P Competitions to be Conducted During Fiscal Year-2004 for the Balance of the Fiscal Year 2005-2006 Building Allotment, amending Section 2.F as recommended by staff.*

**27. PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2003-2004 ANNUAL ASSESSMENT FOR THE FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT Resolution Nos. 5693, 5694, 5695, 5696, 5697, and 5698**

Deputy Director of Public Works Struve presented the staff report. He informed the Council that staff held a public meeting Monday night and that letters were sent to each of the 219 property owners affected by the assessment districts, inviting them to attend the meeting. The letter informed property

owners that their assessments were being proposed to increase. He indicated that there were no property owners in attendance at said meeting.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** the Resolution Nos. 5693 and 5694, confirming the Fiscal Year 2003-2004 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Excluding the Conte Gardens and Sandalwood Estates Zones.*

Mayor Kennedy recused himself from the next action item and excused himself from the Council Chambers.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Adopted** Resolution Nos. 5695 and 5696, confirming the Fiscal Year 2003-2004 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Referring Only to the Conte Gardens Zones.*

Mayor Kennedy resumed his seat on the dais.

Mayor Pro Tempore Chang recused herself from the next action item and excused herself from the Council Chambers.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution Nos. 5697 and 5698, confirming the Fiscal Year 2003-2004 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Referring Only to the Sandalwood Estates Zones.*

Mayor Pro Tempore Chang resumed her seat on the dais.

**28. GENERAL PLAN AMENDMENT, GPA-01-05 AND ZONING AMENDMENT APPLICATION ZA-01-11: CLAYTON-MERLANO – Resolution No. 5699 and Ordinance No. 1626, New Series**

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Negative Declaration.*

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**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5699, Approving the General Plan Amendment Request.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1626, New Series.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously **Introduced** Ordinance No. 1626, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT FROM COUNTY A-20 TO CITY R-1 (20,000) SINGLE-FAMILY LOW RESIDENTIAL FOR APPLICATION ZA-01-11: CLAYTON - MERLANO (APN 726-36-045 AND 726-37-006) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**29. GENERAL PLAN AMENDMENT APPLICATION: GPA-02-08: MONTEREY-PINN BROTHERS**

Mayor Pro Tempore Chang indicated that she recently learned that she may have a possible conflict of interest on this item. Therefore, she would be recusing herself from this item and excused herself from the Council Chambers.

Community Development Director Bischoff presented the staff report. He informed the City Council that Vince Burgos advised him that the property owner had to leave the meeting and requested that this item be continued.

Mayor Kennedy opened the public hearing.

William Currie, 225 La Aqua Court, indicated that he was the designated spokesman for the Hidden Creek subdivision which is adjacent to this property. He informed the Council that the residents are in disagreement with the planning commission recommendation. He read into the record a letter from the Hidden Creek subdivision voicing its support for the rezoning of the property adjacent to the subdivision from the current medium density, multi family R-3 to the low density R-2 zoning designation. He stated that the residents support R-1 zoning but are willing to compromise. He stated that the general plan amendment application, as proposed by the Pinn Brothers, meets the residents' requirements. While the residents support their proposal, they would support any proposal that will lower the density of the adjacent property. It is the residents' belief that the proposed plan will provide for a reasonable and consistent graduation of family housing density between the Hidden Creek R-1 residential neighborhood to the commercial zoning along Monterey Road. Hidden Creek residents agree that Morgan Hill needs affordable housing but do not agree that their neighborhood needs to be turned into affordable housing. He indicated that the residents appreciate that the City sends out development proposals to neighborhoods that are being affected.

Mark Grzan said that last time there was development in the area; a 9-foot high wall was built against the creek area. He found this to be concerning. He requested that any future development that occurs along this area be developed in such a way that the development integrates with the creek. He has seen many developers throughout Santa Clara County build huge walls along both sides of the creek to where no wildlife or vegetation can grow. He sees this occurring here with future development. He requested that the City develop a series of ordinances that would require developers to integrate natural features, including creeks and streams, into their development, particular this piece of property.

No further comments were offered.

Director of Community Development Bischoff confirmed that the City does not have an ordinance that specifically addresses the incorporation of creeks and streams into developments. He felt that something along these lines might help to establish some guidelines. He stated that leaving the property designated as R-3 zoning would give much more flexibility to incorporate the creek into the project.

Council Member Sellers stated that the Santa Clara Valley Water District conducted their annual tour this year. He said that one of the tour sites this year was of this area. He said that the Water District has developed several criteria for integrating streams and creeks into development. In looking at the existing wall, it was felt that there were other mitigations that could have been applied. He noted that the creek abuts into backyards. Elimination of the wall would allow free access into private properties. He felt that the City could work with the Water District to mitigate this concern. He stated that the other significant factor is the flood control issues that are still being addressed. Until these are addressed, there are flooding issues with these properties that would take precedent. Therefore, it is a flood control safety issue for those adjacent properties. He felt that integrating the creek and making it a much more attractive thoroughfare would be desirable.

**Action:**                      *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Continued** the public hearing to August 20, 2003.*

Mayor Pro Tempore Chang resumed her seat on the dias.

**30.     GENERAL PLAN AMENDMENT, GPA-03-01/ANNEXATION, ANX-03-03/URBAN GROWTH BOUNDARY/URBAN SERVICE AREA/SPHERE OF INFLUENCE, USA-03-04/ZONING AMENDMENT, ZA-03-05: MALAGUERRA-CITY OF MORGAN HILL BOYS RANCH WATER TANK – Resolution Nos. 5700, 5701, 5702 and 5703 and Ordinance No. 1627, New Series**

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

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- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5700, Approving the General Plan and Urban Growth Boundary Amendment.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5701, Approving the Sphere of Influence Amendment.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5702, Approving the Urban Service Area Amendment.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1627, New Series (Prezoning).*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously **Introduced** Ordinance No. 1627, New Series as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 2.01 ACRES, FROM CITY OF SAN JOSE R-1-1 AND COUNTY A-20 TO OPEN SPACE OS, APPLICATION ZA-03-05: MALAGUERRA-CITY OF MORGAN HILL (APNS 728-35-03 & 05) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5703, Approving the Annexation.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **31. NEW MORGAN HILL POLICE FACILITY**

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that it would take approximately 9-12 months for the new facility to be completed and the move to take place.

Council Member Sellers inquired whether the police department move would be a gradual process and how the move would be conducted safely. He further inquired whether the City would be precluded from doing anything with the existing police facility until the move is completed or whether there were things the City could get involved with in the interim. He stated that he did not want to see the building located on Main and Monterey remain empty for a long period of time.

Mr. Toy informed the Council that the City currently has issued a statement of interest for the police facility located in the downtown area. Staff anticipates that once the City enters into an agreement with the selected firm, staff would be able to coordinate with the police department versus completing improvements for the selected developer.

Chief of Police Galvin indicated that once the communication center is moved into the new center, the police department would officially be operating in the new facility. He indicated that the police department would remain operational at the old facility until this occurs. He stated that it would take 9-12 months for the move to be completed.

Mayor Pro Tempore Chang indicated that she received a letter from one of the police officers addressing the remaining 6,000+ square foot area. She inquired as to the potential uses for this area?

Chief of Police Galvin informed the Council that a tenant has not been identified. He indicated that he has looked at several tenants who would be compatible with the police department (e.g., sheriff's office, parole officers, etc.). However, the City has not been able to find anyone interested in occupying this space.

City Manager Tewes indicated that when the Council changed the Capital Improvement Program to suggest the purchase of this building, the Council directed him to inquire of other public agencies whether they would be interested in leasing the remaining 6,000+ square foot area. Staff has found that public agencies are not seeking new space. Therefore, there are no current plans for the lease of this area. He noted that the existence of the 6,000+ square foot area was one of the advantages the Council saw in selecting this alternative site as it affords the opportunity to generate income until such time that the area is needed to meet future growth.

Council Member Carr inquired how the tenant improvements would be planned with the initial possibility that the area would be used by a tenant and not be a part of the police department until such time that additional space is needed.

Chief of Police Galvin responded that no improvements are proposed at this point for the excess space. The improvements on this space would be completed at a later time.

Council Member Carr felt that the tenant improvements need to be planned for compatible uses.

Mayor Pro Tempore Chang inquired whether the Redevelopment Agency (RDA) portion of City Hall would be a compatible use.

Chief of Police Galvin responded that a government entity like the RDA would be a compatible use.

Mayor Kennedy opened the floor to public comment.

Mark Brazeal indicated that one thing that is of concern to the police officers is the 6,000+ square feet of empty floor space. He challenged anyone to find an income earning tenant at this time when there is

pristine commercial real estate available all around town. He felt that the City was getting into the business of trying to gain income from the 6,000+ square foot area next to a police facility. He felt that the concept of maintaining the 6,000+ square feet as an income generating rental was an illusion. He said that police officers believe that the space could be incorporated into the new police facility to solve a lot of the challenges it is facing with laying the tenant improvements. When you subtract the parking and the 6,100 square feet, the police facility is down to less than 25,000 square feet of usable space for offices, evidence room, storage, etc. If it is being proposed that this building is to last 25 years, he inquired as to the justification to keep this as empty space. He encouraged the Council to move forward with the new police facility.

City Manager Tewes clarified that 11,000 square feet of the space is being used for indoor parking. He said that one of the advantages of this facility is that the City needs a 30,000 square foot police facility 25-years from now. The City has the opportunity to expand the building envelope to meet this need in the future. He noted that the entire space is not needed today but will be needed sometime in the future. He said that there are two important options: 1) parking need not occur inside, using the 11,000 square feet for office space; and 2) the 6,000+ square foot area, if leased out on a short term basis, allows the City to earn income and make the square footage available when needed for the police expansion.

Officer Brazeal stated that in order to maintain the security of the police facility, the City would have to build a fire wall between the 6,000+ square foot area and the rest of the police facility.

No further comments were offered.

Council Member Sellers felt that the comments were valid concerns. He said that there are some safety measures internally such that the City needs to make sure that there is a fire wall. He said that leasing the 6,100 square foot area may result in over \$100,000 per year in income that can be used to hire another police officer. He stated that the City cannot allow just any use to go into the facility. He felt that the use has to be a specific one and that it may take a period of time before the City finds the right tenant for the facility. He noted that it would be many years in the future that the extra square footage would be needed. If the City can lease the excess area to another agency or appropriate use, receiving sufficient income that would allow the City to bring on another police officer, he felt that this would be a great trade off. He felt that the City needs to continue pursuing leasing the excess area with an appropriate use, taking safety precautions into account both internally and externally to the building.

Mayor Pro Tempore Chang felt that relocating the Redevelopment Agency office to the facility or some other Redevelopment Agency use for the site would be a compatible versus some other use. She recommended that something be done to this extent so that the users of the facility are able to work together and are compatible.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Authorized** the City Manager, Subject to City Attorney's Review, to Execute, Make Modifications as Needed, and Take Actions as Necessary to Execute the Lease and Purchase Agreements, and Architectural and Construction*



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*Management Services Agreements to Lease, Acquire and Construct Tenant Improvements at 16200 Vineyard Boulevard.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** Staff to Proceed with Arranging for the Financing of the Facility.*

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the City Council unanimously (5-0) **extended** the meeting curfew to one hour.*

### **32. GENERAL CONTRACTOR PACKAGE BID RESULTS - MORGAN HILL AQUATICS COMPLEX**

Recreation and Community Services Manager Spier presented the staff report. She informed the City Council that Glenn Ritter, Construction Phase Project Manager; Jim Dumas, public projects manager; and Bob Olson, Nova Partners, were present to answer questions the Council may have.

Glen Ritter reported that on July 8, 2003, the City received three competitive bids from general contractors for the aquatics center project. However, the low bid for the base work for this project was over the approved budget amount. He presented the Council with a supplemental document containing staff and the aquatics complex subcommittee recommendations on how the City can proceed with the aquatics center and still remain on target for a May 28, 2004 grand opening. He said that in order for the City to remain on schedule for the May 28 grand opening, it would be necessary that the base bid contracts be awarded immediately (this evening). He indicated that staff and the subcommittee met on July 14 and are recommending that additional funding be specified from the park development fund in the amount of \$1 million to be applied toward the purchase of the land for the aquatics center. In addition, staff and the subcommittee will be working with the construction manager to identify potential value engineering cost savings or deferred scope items. Staff and the subcommittee would present to the Council a list of cost savings items at a future meeting in order to reduce the contract amount by approximately \$550,000. Should the Council decide to proceed with this project, it will be necessary for the City to engage professional consultants for construction services.

City Attorney Leichter recommended that the Council award the bid predicated on value engineering.

Mayor Kennedy stated that he met with staff on Friday morning to go over the bids at length. He said that the construction manager, Mr. Dumas, Mr. Ritter and others went over the function of the facility. He said that the City could eliminate the integrated colored concrete deck but that you would end up with a drab grey concrete facility. The subcommittee is recommending that this remain in the design. He stated that the Sports Management Group has indicated that in order to maximize the return on investment and get good use of the facility, it would be better to have a six lane instructional pool versus a four lane pool as a six-lane instructional pool would attract toddlers and families. Adding the deep water competition pool at an additional cost of \$7,800 makes the 50-meter pool available for competitive events. He felt that there were a lot of cost items that have already been deleted in the

\$550,000. He felt that a lot of work has been done but that there is still more work to be done. He stated that the subcommittee is recommending that the Council move forward with the aquatics complex, challenging the subcommittee and staff to achieve the value engineering numbers in order to build the level of facility the Council and community would like to see. He recommended that the Council authorize an additional \$1 million in funding. It is felt that these funds can come from the capital improvement project fund.

Council Member Carr said that as the subcommittee reviewed the project on Monday, it became clear that it was similar to the situation the City faced with the Community and Cultural Center. The Council used strategies to accomplish that project to bring this project in as well. As that project moved along and some costs began to escalate, the Council asked the subcommittee to go back and perform value engineering, dictating dollar amounts to be achieved. He said that with each project, the City needs to take costs out of them but not take so much out that it is not worth doing the project anymore. He felt that the significant difference between the aquatics complex versus the Community Center is that the additional dollars that are being recommended in the report this evening are not coming out of the Redevelopment Agency's funding sources. The subcommittee felt that it was important that the City not put at risk any of the other Redevelopment Agency projects by adding additional dollars to this project. He felt that staff came up with a great recommendation in looking at the pot of dollars from the park acquisition funds to help in the actual cost of acquiring the park site that will become the aquatics center/park for the community. He felt that it was important to point out that the recommendation before the Council this evening for additional funding would not take Redevelopment Agency dollars away and apply them to other projects at risk. He agreed that it will be a challenge for the subcommittee and staff to make sure that it is achieving the numbers in value engineering while making sure that the project is one that will bring back the City's return on investment, as anticipated.

Mayor Kennedy opened the floor to public comment.

John Rick, 3215 Oak View Lane, encouraged and urged the Council to keep this project on schedule as the community's need has never been greater as it continues to grow. Due to the lack of capital improvement funds, he indicated that the Morgan Hill Unified School District will be recommending to the Board of Trustees that they demolish the Britton Middle School pool as early as this fall. This would result in one pool remaining in town for the entire community. He indicated that the Aquatics Foundation remains committed to supporting the center and the operations for the entire community. It is the Foundation's goal to have more than \$100,000 in the bank by next September, noting that the Foundation is 22% on the way to achieving this goal. He indicated that two fundraising brew festivals are being planned and a full year's worth of donor brick sales will assist in achieving this goal. He said that it has always been the preferred use of the monies of the Foundation to subsidize operations and maintenance and provide low income scholarships. He stated that the Foundation will remain flexible and work with the City to determine what will be the best use of these funds to be raised for the center.

Mark Grzan said that this is a significant project and is over budget. He said that at the meeting of May or June, the Mayor guaranteed to the Council and the public that this project would not be over budget. He felt that this project is a money pit in so many different ways. He said that the studies that were completed and presented to the Council indicate that no aquatics centers make money. He felt that this

would be a regional facility and would violate the principles of the Parks and Recreation General Plan. He said that the feasibility studies that he has seen require the City to draw from a radius of 25 miles in order to support the center. He did not believe that this was what the public voted for or wanted when they identified this facility. He said that the facility has evolved into a competitive center and that he does not believe that the public realizes that this is the main emphasis of the facility. It was his belief that the 50-meter pool would not be used by the public as it is scheduled to be used almost every weekend in the summer by a competitive end. He felt that this would be the prime time when the public would want to use the facility. He expressed concern that this portion of the aquatics center will draw a significant amount of resources away from the public and will not be used by this community. He stated that the marketing plan was optimistic. He felt that there were options for the City such as: 1) elimination of the 50-meter pool from the project; and 2) expend the recreation portion of the aquatics center in order to serve the residents of the community. It was his belief that the Council should partner with the School District and build a 50-meter pool in conjunction with the Sobrato site. He noted that other cities have partnered with School Districts (e.g., Sunnyvale). Such partnerships allow entities to leverage resources, building a pool while the school maintains it. He felt that these were achievable options and that it was not too late to do so. This would be one way for the City to get the 50-meter pool without impacting the residents of this community with debt. He noted that the City of Sunnyvale has a population of 130,000 and has been in existence for approximately 55 years. He said that this City is just now building its first 50-meter pool and that Morgan Hill's population is ¼ that of Sunnyvale's.

Cindy Azevedo stated that she has seen the number of swimmers increase tremendously with the anticipation of the new aquatics center. She said that both the youth and masters swim programs are bursting through. She felt that the current situation, with limited available pool space available, is extremely crowded but that everyone is getting through it with the anticipation that the aquatics center would be completed by next summer. It is felt that community assets are in need. Above all is the need for the 50-meter pool as it has so many uses above and beyond the six lane lap pool. She urged the Council to keep the project on track as it is direly needed in the community.

Geno Azevedo indicated that the Roseville and Folsom aquatics center are beautifully designed. They are fully functional, provide for multi uses and are tied into the community that surrounds them. It is his hope that the City can achieve these types of facilities. He said that the School District does have a nice pool at Live Oak High School but that come fall and spring, it is hard to get pool time for others. He stated that the same situation would occur at the Sobrato School. He said that that the City was on the right track and that the project will work.

No further comments were offered.

Council Member Tate stated that he does not debate the need for an aquatics complex as one of the facilities that should be provided to the community. However, he felt that arguments could be made for a lot of other types of recreational facilities. He understands that the Council has voted to approve, as an overall priority, the construction of the aquatics center. However, he did not support it and that he could still not support it. He requested that the Council consider looking at the priorities one more time. He felt that the Council owes the seniors and the youth a promised indoor/multi generational recreation center. He did not see how this facility would be built if the Council puts all its funding into the aquatics

center. The Council is not only applying the entire budget of the aquatics center into this project, it is now taking from other funding sources to fund this one project. He did not believe that the playing fields, indoor recreation center or the library projects would come in cheap. He felt that the Council needs to prioritize the projects and pursue those that are of priority. He noted that the Council has not allowed citizens to advocate for these projects. He said that he would prioritize the aquatics center as the number one project but that he did not know if this was the right priority for the community. Therefore he could not support the action this evening and felt that the City is hurting itself by the deadline mentality of opening the project by a certain date. He said that the bids may have come in higher because project developers would have to construct the project with penalties if not completed by the identified date. He said that it was previously argued that bids would be lower because companies would be desperate for work, noting that the bids came in 24% higher than anticipated. He noted that the \$1 million is being taken directly from other projects that the Council could envision as possible prioritize. He felt that the playing fields are a natural use for park funds. He stated that he could not recognize the aquatics complex as the number one priority until the Council goes through a formal prioritizing process. Therefore, he could not support the action, even though there is a need.

Council Member Sellers stated that he had a lot of anxiety over the initial bids. He said that there has been a consistency with other projects. He said that staff and the subcommittee took a hard look and reduced a lot of the things that were going to be incorporated into the facility without losing the integrity of the project. He felt that it was vital to have the recreation and the different components as integral parts. He noted that park acquisition funds are being proposed for this facility. He felt that it would create a difficult proposition to consider utilizing these funds for the recreation facility. He stated that he remains dedicated to making sure that the indoor recreation facility is not compromised with the vision that was set out for it. He felt that the City has been increasingly creative as these projects come before the Council due to experience and because it realizes the constraints with a tighter budget. He does not see a reason, given the City's tract record that the Council could continue to proceed with the other projects. He did not understand the statement made that expediting this project was costing the City additional dollars. He said that the City is working toward a May opening in order to maximize the income the City will receive from this project. He stated that he has not found any bids anywhere that significantly increased the costs because of a timing issue. He would agree to proceed with an aggressive schedule but not so that the City is spending dollars unwisely on it. He stated that he would agree to move forward with this project if it is the will of the majority of the Council with the understanding that value engineering needs to be looked at very closely.

Mayor Pro Tempore Chang said that originally, when the Council made the aquatics center the number one priority project, she supported the action. She was concerned with the operating costs. However, as the Council approved the Ford dealership, this portion of the money could be used to construct part of this project. She noted that it is being recommended that \$1 million be taken from the park fund to assist this project. It was her belief that this would be a nice/fun project. If funding is available, she recommended that it be completed. She agreed with Council Member Tate that the Council needs to look at other priorities to make sure that they can proceed. She said that it is anticipated that with every project, the City needs to limit the scope of the work at the beginning. Once the scope is limited, you gradually adjust to the fact that enough funding is not earmarked for a project. She stated that she was

not surprised that the cost for the project is where it is today but that it is her hope that this is the total amount of funding needed to complete the project.

Mayor Kennedy stated that he would be supporting this project but that he was cognizant of the need for a senior center and an indoor recreation center facility. He was confident that Mayor Pro Tempore Chang and Council Member Sellers, working with the Parks and Recreation Commission and staff, will be able to keep this project moving forward as well. He noted that the Council approved over \$8 million for a new police facility this evening. He felt that these are projects that are desperately needed and that they are facilities that the citizens deserve. It is his hope to keep moving forward to deliver the projects that were promised to the citizens.

Council Member Tate emphasized that it was extremely important for the aquatics subcommittee to concentrate on the operational cost and not necessarily minimize the City's outlay of capital at the beginning for the City to achieve a return on capital costs.

Mayor Kennedy indicated that Bob Olsen, the construction manager for the project, has done a great job in sorting through areas to value engineer costs.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-1 vote with Council Member Tate voting no: 1) **Approved** the project plans & specifications and adopted project budget; 2) **Awarded** construction contract to Gonsalves & Stronck in the amount of \$6,354,600 for the General Contractor package base bid only; 3) **Awarded** Phase 2 of construction contract to California Commercial Pools in the amount of \$2,300,000 for the pools package base bid phase 2 only and approved assignment of contract to Gonsalves & Stronck; 4) **Authorized** the City Manager to execute a consultant agreement with Biggs, Cardoso Associates, Inc. for construction testing and inspection, subject to City Attorney approval; 5) **Authorized** the City Manager to execute a consultant agreement with Pacific Geotechnical Engineering for construction soils testing and observation subject to City Attorney approval; and 6) **Specified** that \$1,000,000 of Parks Development Funds (CIP#110097) be allocated toward the purchase of land for the Aquatics Center.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **34.     CHAMBER OF COMMERCE ANNUAL REPORT**

**Action:**                *By consensus, the Agency Board **Continued** this item to July 23, 2003.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 11:43 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:56 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:57 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**